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SUBJECT: COUNTERVAILING DUTY INVESTIGATION: EC CASES

REF: BRUSSELS 2288

1. IN VIEW OF THE NUMBER AND COMPLEXITY OF ACTIVE COUNTER-
VAILING DUTY INVESTIGATIONS INVOLVING PRODUCTS FROM THE
EUROPEAN COMMUNITY, AND SOME CONFUSION WHICH APPEARS TO
EXIST IN COORDINATING THESE INQUIRIES, THE FOLLOWING PROCE-
DURES ARE FORWARDED FOR POSTS INFORMATION. THESE PROCEDURES
WHICH INVOLVE THE MANNERIN WHICH EMBASSY OFFICERS AND
CUSTOMS REPRESENTATIVES SHOULD OPERATE DURING THE FACT-
FINDING PORTION OF COUNTERVAILING INVESTIGATIONS, ARE APPLI-
CABLE TO ALL CURRENT INVESTIGATIONS.

2. PROCEDURES FOLLOW:

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A) IT IS THE RESPONSIBILITY OF THE CUSTOMS REPRESENTATIVE TO CONDUCT COUNTERVAILING DUTY INVESTIGATIONS AND DEVELOP ALL THE RELEVANT FACTUAL INFORMATION WHICH IS NECESSARY FOR A DETERMINATION AS TO THE EXISTENCE OF BOUNTIES OR GRANTS, IF ANY, AND THEIR AMOUNTS.

B) EMBASSIES ARE REQUESTED NOT TO INITIATE CONTACTS WITH

GOVERNMENT OR INDUSTRY OFFICIALS CONCERNING AN INDIVIDUAL COUNTERVAILING DUTY INVESTIGATION WITHOUT FIRST CONSULTING THE CUSTOMS REPRESENTATIVE.

C) IF IT SHOULD DEVELOP THAT A HOST GOVERNMENT OR FIRM CALLS ON EMBASSY, EMBASSIES MAY RESPOND AS THOUGHT APPROPRIATE BUT ARE REQUESTED TO FOCUS ON BROAD ISSUES RELATED TO COUNTERVAILING DUTY STATUTE AND AVOID DISCUSSION OF SPECIFICS OF INDIVIDUAL INVESTIGATIONS IN PROCESS. TO ENSURE MAXIMUM COORDINATION, REPORTS ON SUCH CONVERSATIONS SHOULD BE FORWARDED BOTH TO WASHINGTON AND THE CUSTOMS REPRESENTATIVE.

D) AS AN OPERATING RULE, ALL INQUIRIES WITH RESPECT TO COUNTERVAILING DUTY CASES SHOULD BE CONDUCTED THROUGH HOST GOVERNMENTS AND NO CONTACTS SHOULD BE MADE WITH FIRMS WITHOUT THEIR ACQUIESCENCE THROUGH THE HOST GOVERNMENT. WHERE THERE IS AN INDICATION THAT HOST GOVERNMENTS OR INDIVIDUAL FIRMS MAY NOT COOPERATE, THIS SHOULD BE REPORTED IMMEDIATELY TO WASHINGTON BY EMBASSY OR CUSTOMS REPRESENTATIVE AS APPROPRIATE. CUSTOMS REPRESENTATIVES ARE RESPONSIBLE FOR DETERMINING THE APPROPRIATE COMPANY OFFICERS WHO SHOULD BE VISITED AND ARRANGING DIRECTLY WITH THEM MUTUALLY CONVENIENT MEETING TIMES.

E) CUSTOMS REPRESENTATIVES ARE REQUESTED TO KEEP POSTS FULLY INFORMED OF DEVELOPMENTS IN INDIVIDUAL CASES, AND INFORM EMBASSIES INITIATING CONTACTS WITH HOST GOVERNMENT OFFICIALS.

3. IF THESE PROCEDURES RAISE DIFFICULTIES FOR INDIVIDUAL POSTS IN CERTAIN CASES, THEY ARE REQUESTED TO INFORM LIMITED OFFICIAL USE

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WASHINGTON BEFORE DEPARTING FROM THEM SO THAT ALTERNATIVE PROCEDURES CAN BE CONSIDERED.

4. WE UNDERSTAND THAT THERE IS CONCERN OVER THE FLOAT GLASS CASE AND THAT CUSTOMS REPRESENTATIVES HAVE BEEN INFORMED THAT THE BELGIAN, FRENCH AND WEST GERMAN GLASS MANUFACTURERS WILL NOT COOPERATE WITH THE CUSTOMS INVESTIGATION. EMBASSY OFFICERS AND CUSTOMS REPRESENTATIVES

ARE REQUESTED TO MAKE JOINT APPROACH TO APPROPRIATE GOVERNMENT OFFICIALS ON AN URGENT BASIS TO SEEK THEIR COOPERATION IN THE INQUIRY. THE FOLLOWING POINTS SHOULD BE MADE:

A) UNDER THE COUNTERVAILING DUTY LAW, THE TREASURY SECRETARY IS REQUIRED TO PROCEED ON THE BEST INFORMATION AVAILABLE TO HIM. IF FOREIGN MANUFACTURERS OR GOVERNMENTS DO NOT PROVIDE COMPLETE DATA DURING THE COURSE OF THE CUSTOMS INQUIRY, TREASURY MUST MAKE ITS DETERMINATION AS TO

WHETHER BOUNTIES OR GRANTS EXIST, AND THEIR AMOUNTS, BASED ON INFORMATION SUPPLIED LARGELY BY THE COMPLAINANT.

B) THIS PROBLEM IS PARTICULARLY SERIOUS WITH RESPECT TO REGIONAL ASSISTANCE SCHEMES, WHERE DETAILED INFORMATION IS SOMETIMES LACKING. AN EVENTUAL TREASURY FINDING, UNDER THE STATUTORY TIME LIMITS, OF A BOUNTY OR GRANT BASED ON "BEST INFORMATION AVAILABLE" AND THE IMPOSITION OF COUNTERVAILING DUTIES (WHICH WOULD IN ALL PROBABILITY BE CONSIDERABLY HIGHER THAN THE AMOUNT OF ANY BOUNTY OR GRANT ACTUALLY BEING PAID OR BESTOWED) COULD HAVE ADVERSE CONSEQUENCES FOR THE INDUSTRY, OUR BILATERAL RELATIONS, AND TRADE RELATIONS IN GENERAL.

C) AFTER THE FACT-FINDING PHASE OF THE INVESTIGATION, TREASURY WILL MAKE A PRELIMINARY DETERMINATION. IF IT FINDS THAT CERTAIN PROGRAMS ARE BOUNTIES OR GRANTS, OPPORTUNITY WILL EXIST FOR REVIEW OF POSSIBLE SOLUTIONS TO

PROBLEM, AND AT THIS TIME ARGUMENTS CONCERNING BROADER ISSUES WOULD BE GERMANE. USG IS AWARE OF EC CONCERNS IN FLOAT GLASS CASES. HOWEVER, WE DO NOT THINK IT IS IN THE INTERESTS OF THE FLOAT GLASS MANUFACTURERS TO REFUSE TO LIMITED OFFICIAL USE

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COOPERATE IN THE CUSTOMS INQUIRY. IF THEY DO REFUSE, TREASURY WILL HAVE NO CHOICE BUT TO PROCEED ON THE BASIS OF "BEST INFORMATION AVAILABLE". THEREFORE, EVERY EFFORT SHOULD BE MADE TO CONVINCE THE INDUSTRY TO CHANGE ITS POSITION.

5. WE UNDERSTAND (REFTEL) THAT SOME EC COMPANIES HAVE

ADOPTED THE POSITION OF NON-COOPERATION BECAUSE OF A STATEMENT ATTRIBUTED TO DEPUTY ASSISTANT SECRETARY SUCHMAN AT A RECENT LUNCH WITH EC MEMBER STATE OFFICIALS TO THE EFFECT THAT INQUIRIES IN FLOAT GLASS CASES WOULD BE CONFINED EXCLUSIVELY TO GOVERNMENT OFFICIALS WITHOUT THE NEED TO MEET WITH INDUSTRY REPRESENTATIVES. THIS QUOTE IS SOMEWHAT IN ERROR. SUCHMAN EMPHASIZED THAT GOVERNMENT

OFFICIALS SHOULD IN EVERY CASE BE THE FIRST TO BECONTACTED, AND THAT NO CALLS ON INDUSTRY REPS WERE TO BE MADE WITHOUT GOVERNMENT PERMISSION. IF GOVERNMENT OBJECTS THEN NO ATTEMPT SHOULD BE MADE TO CONTACT FIRMS DIRECTLY, AND THE GOVERNMENT'S POSITION SHOULD BE IMMEDIATELY REPORTED TO WASHINGTON AS OUTLINED IN PARA 2D). HOWEVER, SUCHMAN'S STATEMENT WAS NOT MEANT TO IMPLY THAT CUSTOMS REPS SHOULD NEVER GOTO FIRMS FOR INFORMATION. IN THE CASE INVOLVING FLOAT GLASS, IT MAY BE IMPERATIVE FROM THE

STANDPOINT OF TIME LIMITS AND THE AVAILABILITY OF PRECISE DATA FOR CUSTOMS REPS TO OBTAIN INFORMATION FROM COMPANIES THEMSELVES AFTER FIRST CONTACTING GOVERNMENT OFFIC-

IALS. THEREFORE, ABOVE CLARIFICATION, IN ADDITION TO POINTS IN PARA. 4, SHOULD BE BROUGHT TO ATTENTION OF GOVERNMENT OFFICIALS IN DISCUSSING THIS ISSUE. ROBINSON UNQUOTE INGERSOLL

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